Department of Revenue

OFFICE of the Board of Revenue

STATION Madras

My No. 6

Dated 3/1/36

A 5435
Todd

Enclosing despatch from Regd. Post

2 C. dated 3.1.36

Encl. 1

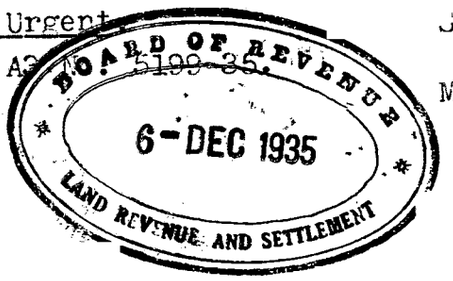
ages in the file

(SUBJECT.)

Suits - (South Kanara) — Maintenance
Write — Fns 435/35 — Jurisdiction re — Assignment — Reference. Sanctioned

Very Urgent

Ref. A2 5199-35.



South Kanara Collector's Office,

Mangalore, dated 3rd December 1935.

From

E. M. Gawne, Esq, I.C.S.

Collector of South Kanara.

The Secretary to the Board,

Land Revenue & Settlement,

Madras.

Sir.

Suits- Mangalore--District Munsiff's Court--O. S. 435/35--Assignment--Jeppinamogar village--S. F. 74/1A (T.S.No.839/1A)--Resumption--Defence.

I enclose a copy of the plaint in the above suit which is for a declaration that S. F. No.74/1A, corresponding to T. S. No. 839/ of Jeppinamogar village, Mangalore Town, is reserved for the use of the Roman Catholic Parishioners of the Rosario Cathedral Church as a burial ground, that it is dedicated for that purpose and that its resumption by the defendant (Government) is not legal, valid and binding on the plaintiff and is liable to be cancelled and also for certain other consequential reliefs.

2. The facts of the case have been fully explained in my letter Ref. A2 No. 3739-34 dated 12th January 1935, finally disposed of in B. P. Mis. No. 3856 dated 10th October 1935. A few days after the resumption order conveyed in Board's reference B. No. 369/35-1, dated 6th March 1935, was communicated to them, the Church authorities sent me a suit notice, threatening to sue Government unless the rights of the Church were recognised and the proceedings towards resumption stopped. As there were no reasons for a reconsideration of the suit notice was simply recorded and peaceful entry of the plot

effected on 17th April 1935. Thereafter the land was inspected by the Land Revenue Commissioner and the Board refused to restore the unlicensed extent in T. S. No. 889/1A to the Church and approved my proposal to assign portions thereof for the construction of houses by or for peons. The Church authorities then saw that their attempts were of no avail and have therefore filed the above suit.

3. I find that in the plaint, the plaintiff has now given a new version to the grant of 1895 that it was made for "burial purposes", which expression is said to include the construction of a mortuary chapel and quarters for the watcher or grave digger. This is only an after-thought and is not borne out by the original order or orders. The original application of 8th January 1895 states definitely "the present cemetery is rapidly being filled" ..... "If the remaining waste ground of that locality be assigned to this parish as burial ground the same chapel will be useful for both the plots". Again, the plaintiff says that the grant amounts to a dedication of the land for a public purpose and that therefore it cannot be put an end to by the Government at their will and pleasure. This allegation has been made with a selfish motive and has no foundation at all. The Government do not recognise dedication, as something superior to alienation.

4. The Government Pleader, Mangalore, whom I have consulted, seems to doubt if the Government had in this case a right to resume the land. I have no hesitation to say that Government have such right and that this is the fittest case in which they ought to assert that right. I enclose a copy of the Government Pleader's letter Ref. No. A125-35 dated 28th November 1935 together with copies of the draft written statement and the draft counter prepared by him and slightly amended by me and recommend that the Board may be pleased to sanction the defence of the suit and to approve the draft written statement and the draft counter in the petition for temporary injunction.

5. In this case the Court has passed an interim injunction (copy enclosed) restraining Government from dispossessing plaintiff of the suit land and from disposing of any portion. This injunc-

BOARD OF REVENUE
6-DEC 1935
LAND REVENUE AND SETTLEMENT

tion order was received by me together with the copy of the plaint and the summons in the suit on 8th November 1935, which was a public holiday in this district i.e. more than six months and a half after the land was actually re-entered upon by the Revenue Inspector and the plaintiff dispossessed of it. Before the order could be communicated to the Tahsildar, who was in charge of the assignment papers, he passed the assignment order (on 9.11.35) and as such the injunction order could not be obeyed. The suit stands posted to 15th February 1936, but the petition for temporary injunction stands posted to tomorrow (4th December 1935). I am asking the Government Pleader, Mangalore, to take an adjournment in the petition for temporary injunction, but it is not likely that a long adjournment will be given. I therefore request that the Board may be pleased to communicate to me the orders passed as early as possible.

6. I submit that in this case the Board may consult the Government Pleader, Madras, with a view to strengthening the case of the Government. The Roman Catholic Churches are very litigious, and in spite of the fact that large extents of land all over the district have been freely granted to them when the grant was found to be reasonable, yet they never concede anything themselves and if a grant is refused they fight tooth and nail to insist on their claim. I may instance the Modan Kap case. The area in dispute there is partially level and partially steep slope. The darkhast failed and the Church instituted a suit to declare the land, warg property and lost the suit. When I came to South Kanara in 1932 and found that the suit had been won by Government I made a special visit to the place with the Government Pleader and the Church's Pleader and suggested a compromise of half for each of the two parties, the level half for the Church and the other part for the nearby Punt. The Church would not agree to the compromise even though I convinced the Vakil. For the last three years the appeal has been pending in the Sub Court and is still pending, though the Government is always ready to argue the appeal. Meanwhile from time

to time I have been pestered by Roman Catholic people who are coming to interview me on one subject have gone on to this Codan Kap subject with a view to tiring me out and getting their way. In the end I have transferred the land to the 'Prohibitory Order Book', in order that at least my successor may not be rushed into an order. So too in the present case there is no real need of the land for burial as Mr. E. F. Thomas was convinced. But the Church is prepared to go to any lengths to prevent the land being put to a use as dwelling places for poor Government menials, several of whom are actually Christians. Since 1935 the land has been vacant and bare. The Church is prepared to spend hundreds of rupees in litigation to keep it so. I think therefore that this is a case where the Government must make a real fight to insist that it cannot be dictated to.

7. The records noted in the margin are enclosed for reference and early return.

Your obedient servant,

Collector.

1.
*Collector's R.Dis. 1055/Mer.1895.
2. --Do-- R. Dis. 119/Mer.06.
3. --Do-- R.Dis. 6378/28
4. --Do-- D.Dis. 2218/34.
5. --Do-- R.Dis. 3739/34.
6. --Do-- D.Dis. 1601/35.
7. --Do-- R.Dis. 4732/35.
8. --Do-- D. Dis. 6331/33.
9. --Do-- R.Dis. 12903/30.
10. Mangalore Tahsildar's Dis.4706 R.1935
11. --do-- 4705/1936.
12. --do-- D.R.234/1945.

BOARD OF REVENUE
6-DEC 1935
LAND REVENUE AND SETTLEMENT

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.No.435/1935.

Between The Rosario Cathedral Parish Church, Mangalore, represented by (1) The Vicar Very Rev. Fr. Julian L. D'Souza and (2) the lay Administrator Mr. J.L.D'Costa. Plaintiff.

and

The Secretary of State for India in Council, represented by the Collector of South Kanara. Defendant.

Plaint under Section 26 Order VII of C. P. Code.

The Plaintiff abovenamed states as follows:-

1. The plaintiff, the Rosario Cathedral Church, Mangalore is a Roman Catholic Parish Church at Bolar, Mangalore and is represented by (1) the present Vicar The Very Rev. Fr. Julian L. D'Souza and (2) The present lay Administrator Mr. J.L.D'Costa, both being residents of Bolar, Mangalore Town. The address of plaintiff for service of all notices and process is the address of the Vicar of the said Church.

2. The defendant is the Secretary of State for India in Council and is represented by the Collector of the South Kanara District, who holds his office in Mangalore.

3. (1) The Rosario Cathedral Parish Church, Mangalore, is the Cathedral Church of the Diocese of Mangalore. It is an ancient Church with a large Catholic population living in Mangalore Thota, Attawar and Kasba Bazaar villages, in Mangalore Town.

(2) The old cemetery appertaining to this Parish Church is situated at Jeppoo, in Jeppinamogar village, Mangalore Town, and it serves also the St. Joseph's Catechumenate at Jeppoo. It is situated close to the Protestant Cemetery and the burial and cremating ground reserved for the Hindu ------ population.

(3) In anticipation of the requirements of the said

Parish Church for an additional burial ground close to the aforesaid cemetery, the late Rev. Fr. E. Frachetti, S.J. the then Vicar of the Cathedral applied for and obtained from the Collector of South Kanara S.F.No.74/1A corresponding to T.S.No.839/1A of Jeppinamogar village free of assessment for use as a cemetery for the parishioners of the said Church under Collector's order, Dis.No.1055 Ver. dated 6.7.1895. This order though it underwent some modification under the subsequent order of the Collector N.Dis.No.508/96, dated 30.3.1896, was ultimately restored as per order Dis.No.119 R.Ver., dated 26th March 1906. The land itself was actually delivered over to Fr. E. Frachetti, S.J., by the Revenue Inspector of the Firka on 8th July 1896.

(4) Acting on the orders aforesaid the Church authorities put up a portion of the boundary wall at a cost of Rs.179.10.3 in 1916 and constructed a portion of the road which the Church was required to do under the terms of the grant in 1919 and 1920 at a cost of Rs.204.2.9, the Church thus spending a total sum of Rs.383.13.0 till 1930 on improvements alone.

(5) When an actual necessity for using the land as a burial ground was felt, the Rev. Fr. A.M.L. Vas, the then Vicar of the Church applied in 1926 to the Municipal authorities, Mangalore for a burial licence as required by the District Municipalities Act and he was granted one which was however limited to a portion of the land viz., S.No.74/1A1 measuring about 1½ acres in extent. This licence though held under suspension by the Collector of the District under Section 36(2) of the Act was ultimately restored by the Government of Madras in their G.O.No.1890 P.H.Misc., Local and Self Government, dated 13.9.1928. Accordingly S.No.74/1A1 was especially enclosed by walls to prevent its being desecrated in any manner at a cost of Rs.1047.1.3 inclusive of the cost of levelling the site.

(7) In 1931 when applications were made by certain persons for darkhast of the remaining portion of the land

BOARD OF REVENUE
6-DEC 1935
LAND REVENUE AND SETTLEMENT

granted to the Church for burial ground, the then Collector of the District in his order Ref.C.No.12909-A2-30, dated 20.4.1931 observed that "being practically a burial ground it is not advisable from a sanitary point of view to assign any portion of S.No.74/1A" and directed the Tahsildar of Mangalore to reject the darkhast applications. This order which was not set aside at the instance of any one only goes to confirm the grant of the land made to the Church in 1895, 1896 and 1906 for a cemetery.

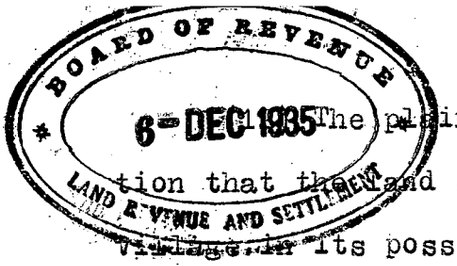
(8) Though the licence issued by the Mangalore Municipality for burials is confined only to the portion 74/1A1, the remaining extent of the land is well adapted for and can be put to such uses as a mortuary chapel and quarters for the watcher or grave digger purposes which are admittedly ------- auxiliary for a Roman Catholic burial ground and which are -- included in the expression "burial purposes" for which the -- original grant was made. A licence for the Municipality is not required for using the land for the auxiliary purposes aforesaid. The buildings hereinbefore mentioned have yet to be constructed and their construction on the land licensed for burials would further reduce the area of the actual burial ground. The plaintiff also submits that even the unlicensed ground can be made use for burial purposes if properly levelled

(9) The authorities of the plaintiff church having recently come to know of the Collector's intention to grant the "unlicensed" land forming part of the original grant, on ----- darkhast under house site rules to menials in Government ---- service of the Revenue Department represented to that officer that the land in question was required for "burial purposes" of the Roman Catholic subjects of the Parish for which the land was originally granted. But the Collector in his proceed-ings Ref.C.No A6-6331-33, dated 15.3.1934 ruled that the --- limits of the "existing burial ground" cannot be extended and that no more ground will be reserved as a burial ground. The resumption of the said land was subsequently sanctioned by

the Board of Revenue, Madras by their proceedings Ref.B.369/35-1 dated 6th March 1935 communicated to the plaintiff church by the Collector in his proceedings R.Dis.No.3739/34, dated 18th March 1935.

(10) The Roman Catholic Christians are required by the rules of the Catholic Church to bury their dead in a consecrated land set apart for that purpose and not bury them promiscuously in a public burial ground. The plaintiff also submits that Catholic Cemeteries in this District are being maintained entirely through private agency and no public cemeteries as such are reserved or maintained for the Roman Catholic subjects by Government or the Municipality, which also accounts for the grant made by Government in 1895, 1896 and 1906, exclusively for the benefit of the population of the plaintiff Church.

(11) Both the licensed land and the unlicensed ground are in the possession of the Church and have been in its possession since 1896. Relying on the grant, the plaintiff has spent a considerable sum of money over the licensed and unlicensed ground as required by the terms of grant. The land having been granted by Government for the use of the Roman Catholic subjects of the plaintiff Church as a burial ground, it is not open to the defendant to resume a portion of the land granted and give it on darkhast to other persons. The defendant is further estopped by the terms of the grant and his subsequent conduct from resuming any portion of the grant. The original grant or reservation of the land by Government for burials of the parishioners amounts to a dedication of the land for a public purpose and the plaintiff Church has an interest in the land which cannot be put an end to by the defendant at his will and pleasure. The Collector has directed the dispossession of the plaintiff of the said land but the Government have no right to do so. The resumption made by Government is not valid and does not bind ------ plaintiff nor affect its vested interests in the said land.



The plaintiff is therefore entitled to a declaration that the land S.F.No.74/1A of the said Jeppinamogar village in its possession is reserved for the use of the Roman Catholic parishioners of the plaintiff Church as a burial ground and that it is dedicated for that public purpose and that its resumption by defendant is not legal, valid and binding on plaintiff and is liable to be cancelled and for a permanent injunction restraining the defendant from dispossessing the plaintiff of the said land so long as it wants to use it for the purpose for which it was granted by ----- defendant and from assigning the said land to other persons on darkhast or otherwise.

(13) The Vicar of the Church as representing the said Church served a notice on the defendant on 29.5.1935 as ----- required by law stating the grievances of the plaintiff and the relief he claimed on its behalf but got no redress.

(14) The cause of action for the suit arose in Jeppinamogar village, Mangalore Town on 6.3.1935 when the Collector communicated to the plaintiff the Board's proceedings, dated 6.3.1935 sanctioning the resumption of the portion of the land unlicensed for burials.

4. The plaintiff values the relief sought for at ----- Rs.105.0.0 and a court fee of Rs.15.8.0 is paid herewith.

5. The plaintiff prays for a decree against defendant for the following reliefs:-

(1) Declaration that the land S.F.No.74/1A corresponding to T.S.839/1A of Jeppinamogar village in the possession of the plaintiff is reserved for the use of the Roman Catholic ----- parishioners of the plaintiff Church as a burial ground, the expression 'burial purposes' including the auxiliary purposes of a mortuary chapel, and a watcher or grave digger's quarters and is dedicated for the said public purpose of burying the dead of their community, and that the resumption thereof made by Government is not legal, valid and binding on plaintiff and is liable to be cancelled. This relief is valued at Rs.100/-

and a court fee of Rs.15/- is paid under Article 17 B of Schedule II of the Court Fees Act.

(2) A Permanent injunction restraining the defendant from dispossessing plaintiff of the said land so long as it is wanted by the said Church for the purposes for which it was granted by Government and from granting the same on darkhast or otherwise to any other person. This relief is valued at

(3) Directing the defendant to pay the costs of the suit with interest thereon at 6% per annum from date of decree till payment;

and for such other and further reliefs as to this court may seem fit under the circumstances of the case.

Sd/- P. D'Souza,

In the Court of the District Munsif of Mangalore.

C.S.435/35

R.I.A. 994/35.

The Rosario Cathedral Roman Church Mangalore represented by the Vicar Very Rev. Fr.Julian L.D.Souza and another. } Plaintiff - Petitioner.

Vakil - Mr. P.D'Souza.

The Secretary of State for India in Council represented by the Collector of South Kanara. Defendant - Respondent.

To

The Secretary of State for India in Council represented by the Collector of South Kanara, Mangalore.

Whereas plaintiff has applied to this court as per above R.I.A. 994/35 praying that a temporary injunction may be issued restraining defendant from dispossessing plaintiff of the suit land described in the plaint and from disposing of any portion of the suit land by darkhast or otherwise in favour of any person pending disposal of the suit. You are hereby restrained until disposal of the suit or until further order of the court by a temporary injunction from dispossessing plaintiff of the suit land described in the plaint and from disposing of any portion of the suit land by darkhast or otherwise in favour of any person.

Date of hearing 4-12-1935.

Given under my hand and the seal of the court this 5th day of November 1935.

Sd/- Boloor Krishnaya,
Central Nazir.

(True copy)

madhavanad
For Collector. 3.XII

BOARD OF REVENUE
6 DEC 1935
LAND REVENUE AND SETTLEMENT

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.No.435/1935

Between

The Rosario Cathedral Parish Church, Mangalore.....) Plaintiff.

and

The Secretary of State for India in Council.....) Defendant.

Written statement of the defendant under order VIII, Rule 1, C.P.C.

The defendant abovenamed begs to state as follows:-

1. That the address of this defendant is as stated in the plaint.

2. This defendant is not interested in traversing the allegations in plaint paras 3 (1) and (2).

3. This defendant denies that Rev.Father E. Frachetti, S.J., applied for and obtained from the Collector of South Kanara, S.No.74/1A free of assessment, in anticipation of the requirements of the said Parish Church. This defendant submits that under the representation that the then existing burial ground of the said Parish Church was almost full and that there was an urgent need of another burial ground, Rev. Father Frachetti applied to the Collector of South Kanara for the grant free of assessment, S.No.74/1A for use as a burial ground and the Collector, believing the said representation to be true, by his order dated 6-7-1895, as modified by orders dated 30-3-1896 and 26-3-1906, sanctioned the grant and directed the transfer of the land from Ayan to Poramboke.

4. That ever since the said time the land has been classed and registered as Poramboke. The said land has never been included in the holding of the Plaintiff Church nor has that church been ever paying any assessment therefor.

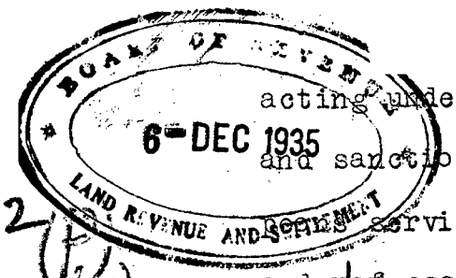
Under the circumstances , it is not correct to say that it has been assigned to the plaintiff church nor could the Collector, without consulting the Board of Revenue, Madras or without the sanction of the Local Government or the Government of India, assign the same free of future assessment. Such an act, if true, is ultra vires of his power as Collector and confers no title on the plaintiff church.

5. This defendant further submits that in any case, the grant being one coupled with the condition that the land should be used as a burial ground, and admittedly the plaintiff not having used as a burial ground up till now any portion of 74/1A, excepting the land for which permission has been given by the Municipality, and wherein very few burials have taken place, and they recently in order to strengthen the claim of the church, the grant could be forfeited properly and the defendant had power to resume the said land.

6. The grant being one, if at all, for being used as a burial ground, and the plaint plots not having been used up till now as a burial ground and the portion of S.No.74/1A, for which license has been given by the Municipality being in the ordinary course of events sufficient to satisfy the needs of the plaintiff parish for a long time to come, this defendant submits that there is no need to reserve the other portion of the land for remote contingencies.

7. This defendant further submits that the land having been reserved for ~~the purposes of~~ a burial ground and the Municipality having refused to grant permission for the use of all land except portion of 74/1A as a burial ground, the grant fails, the purpose being not capable of fulfilment and this defendant is entitled to resume the same.

8. This defendant submits that when need was felt for other purposes, the Board of Revenue in consultation with the Collector having ordered the immediate resumption of the unlicensed portion of 74/1A the Collector sanctioned the re-transfer of the land from Poramboke to Ayan. The Collector



acting under such authority has retransferred the same and sanctioned the assignment of portions of the same to persons serving in the Revenue department, while the actual order of assignment was passed by the Tahsildar of Mangalore.

9. The Board of Revenue at Madras, the Collector of South Kanara and the Tahsildar of Mangalore having acted within their powers in so resuming the land and transferring it from Poramboke to Ayan and then assigning the same, the plaintiff is not entitled to question their acts. This defendant further submits that no civil suit lies challenging their acts and the plaintiff has misconceived its remedy.

10. This defendant denies that the plaintiff put up a boundary wall acting on the orders of the Collector or that it was required to do so by any order from the Collector as wrongly stated in para 3(4) of the plaint. This defendant does not admit that the plaintiff spent Rs. 383-13-0 till 1930 on improvements or that such improvements were necessary for the land. This defendant denies that ever since 1896 the plaintiff has been maintaining the road in the plaint plots as required. This defendant understands that the road is being maintained by the Municipality.

11. This defendant admits that after permission was given to the plaintiff to use a portion of 74/1A as a burial ground by the Municipality, it has enclosed it by a wall, but this defendant is not i a position to say whether it was at a cost of Rs. 1047-1-3 or that it was done for preventing the place from desecration.

12. This defendant denies that any further orders by the Collector in 1931, or otherwise, in any way confirms the grant of 1895, 1896 and 1906 if in fact there was any such grant, or in case the grant has been forfeited. This defendant does not admit that any such orders give any further strength to the infirmity of plaintiff's title.

13. The allegations in para 3(8),(10) and (11) are

highly speculative. This defendant does not admit that the original order in any way set apart this land for "burial purposes". Nor does this defendant admit that a separate mortuary chapel and quarters for watcher and grave digger to be purposes admittedly ancillary for each Roman Catholic burial ground. Even in case the land is well adopted for that purpose and though Municipal license may not be required for the same, this defendant is not bound to provide for such purposes, nor is the plaintiff entitled to claim land for the same as a matter of right. The plaintiff's predecessor specifically stated in his application dated 8th January 1895 that the existing chapel would serve the old and new burial grounds.

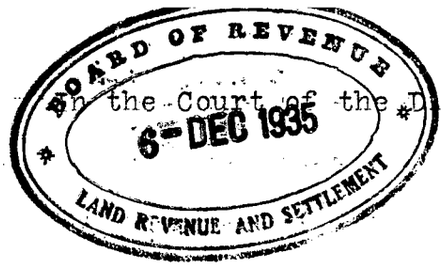
14. This defendant does not admit the various allegations made in plaint para 3(10) or that S.No.74/1A was assigned to any private agency to be used as a burial ground.

15. This defendant emphatically denies that the original order of the Collector dated 6-7-1895 is or in any manner can amount to a dedication of the land for a public purpose or that any intention was entertained to do so. Further this defendant denies that the order of 6-7-1895 puts an end to all powers of his to resume the land and assign it on darkhast.

16. This defendant further denies that the plaintiff was in possession of the entire land 74/1A ever since 1890 and that it has spent large sums of money acting on the representations of this defendant or that this defendant is in any way estopped from resuming the land and assigning it.

17. This defendant does not admit that the plaintiff has any vested interest in the land or that the resumption of the land by the Board of Revenue Madras is not binding upon the plaintiff.

18. The land being, if at all, set apart for the time being for Communal purposes and this defendant acting upon the belief that there is no need for such communal purpose the persons



In the Court of the District Munsif of Mangalore.

O.S.No. 435/1935.

R.I.A. No. 994/1935.

Between:

Rosario Cathedral Parish Church .. Plaintiff - Petit

and

The Secretary of State for India.. Defendant -Respondent.

Counter of the defendant.

1. That the petition is not maintainable in law and on facts.

2. This defendant denies that the possession of S.No.74/1A other than portion of 74/1A1 for which licence has been issued by the Municipality was in the possession of the plaintiff Church at the time of the filing of the suit.

3. This defendant submits that the Board of Revenue, Madras as per its resolution B.369/35/I dated 6-3-1935 has ordered the resumption of the said land and the Collector has ordered the same to be assigned to the menial servants of the Revenue Department after a member of the Board personally inspected the locality and approved the proposal.

4. That the Revenue Inspector of Mangalore acting under the orders of the Tahsildar, Mangalore took peaceful possession of the said properties on 17-4-1935. The defendant submits that no injunction can therefore be granted

5. That the Tahsildar of Mangalore has subdivided a portion of the plot into 74/1A2 to 1A 11 and has assigned it to 10 peons in D.R.No. 640 of 1343 on his file and nothing more remains to be done.

6. The Board of Revenue the Collector and the Tahsildar having all acted within their authority, their acts are not liable to be questioned at the instance of the plaintiff in a suit.

7. That the defendant has resumed the land which was classed as Poramboke land, ~~seeing that the~~ The plaintiff Church has no immediate use of it, and ~~that~~ the land cannot be ~~put to the use for which it is set apart~~ used as a burial ground as the Municipality has refused to grant permission to use it as a burial ground.

8. This defendant denies that any grant of the land was

made for burial purposes or that the classification of the land as poramboke can be construed as a dedication for any such purpose. This defendant also denies that the plaintiff can make use of the land for any purpose other than that for which it was set apart viz., for use as a burial ground.

9. This defendant submits that he has absolute power to retransfer a land from Poramboke to ayan and the act of the authorities of the Revenue Department in having done so cannot be questioned by the plaintiff.

10. This defendant denies that the plaintiff has power to use the unlicensed land for any purpose other than burying dead bodies and that no permission is needed for the use of the same for erecting buildings or that the unlicensed land can be used for purposes which the plaintiff deems ancillary to be a burial ground.

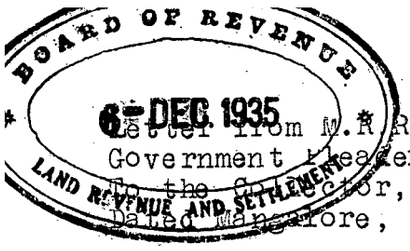
11. This defendant submits that under the circumstances plaintiff is not entitled either to the declaration or injunction sought for in the plaint.

12. The plaint is further defective under section 42 of the Specific relief Act.

13. As such this defendant submits that there is no case made out for the issue of a temporary injunction pending the disposal of the suit and prays that the same may be dissolved and this defendant allowed his costs.

South Kanara Collector's office,
Mangalore, dated 3 - 12 - 1935.

For Collector.



Letter from M.R.Ry. K. Sadashiva Rao, Avl., B.A.,M.L.,
Government Pleader, Mangalore.
To the Collector, South Kanara, Mangalore.
Dated Mangalore, 28-11-1935, Ref.No.A.125/35.

Suits - O.S.435/35 Mangalore District Munsif's Court - Rosario Cathedral Church - Plaintiff.

In my opinion the main question upon which the result of the suit will depend is as to whether the Government had a right to resume the land for the various reasons set out in the draft written statement. The question is not free from difficulty. But however as the purpose for which the land was granted is not capable of fulfilment in the near future and as the Collector with the approval of the Board has sanctioned the assignment of the said land to menial servants of the Revenue department and as this has been already done this case may be defended.

I am herewith forwarding draft of the written statement and the counter for the injunction petition. The same may be sent to me after they are approved for being filed into court. In case it is necessary I shall obtain a few day's time for filing of the counter on 4-12-1935. For the purposes of the injunction petition the documents necessary will be that the Revenue Officer's report that the land has been taken possession of and certified copy of the order of the Tahsildar assigning the plots to the persons. I find reference to a notice served to the Vicar of the Church by the Revenue Inspector and the duplicate thereof on page 9 of File N. That will be necessary to show that the plaintiff church had no possession of the property on the date of the suit.

Please therefore make arrangements for the sending of the said records before the time of the hearing of the application.

The papers sent to me are herewith returned.

Enclosures to South Kanara Collector's Ref.A3.No.5199/35
dated 3rd December 1935.

(1) Collector's file R.Dis. 1055/Ver.1895.

(2) do. R.Dis. 119/Ver.1906.

(3) do. R.Dis. 5378/1928.

(4) do. R.Dis. 12909/1930.

(5) do. D.Dis. 6331/1933.

(6) do. D.Dis. 2228/1934.
(7) do. R.Dis. 3739/1934.

(8) do. D.Dis. 1601/1935.

(9) do. ,Dis. 4762/35.

(10) Mangalore Tahsildar's Dis.705/1896.

(11) do. Dis. 4706 R/1935.

(12) do. D.R. 234/1345

To

The Secretary to the Board,
Land Revenue & Settlement,
M a d r a s.

Urgent.

Ref.A3.No.5199-35.

South Kanara Collector's Office,
Mangalore, 7th December 1935.

From

E. M. Gawne, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue & Settlement,
M a d r a s.

Sir,

Suits - Mangalore - District Munsiff's Court- O.S.435/35 Assignment - Jeppinamogar village - S.F.74/1A (T.S.839/1A) - Resumption - Defence.

In my Ref.A3.No.5199/35, dated 3.12.1935, I reported tha the petition for temporary injunction in the above suit stood posted to 4.12.1935 and that the Court is not likely to give a long adjournment. The Government Pleader, Mangalore, now ---- reports that the petition stands adjourned to 6.1.1936 for the filing of the counter on behalf of the Government.

DRAFT FOR APPROVA

Date. / / Initials.

SUBJECT:—

Suits (South Kanara) - Mangalore Dt Municip - Ors. 435/35 - Jappinamogaru - Assignment - Resumption - Defence - sanctioned

:n received for ir copying ...

:n copied

:n examined

:n signed

:n despatch

D AGAIN

EAD *ALSO*:—

No. From the A 5652/35 dated 19

,, ,, ,, ,, 19

,, ,, ,, ,, 19

~~rder~~ ~~Resolution~~ Ms. No. 0, dated 3.1.

A 5435/35 pp 1-4 cf - A

A 5652/35 pp 5-6 cf - A

The Board sanctions the defence of the suit.

2/ The draft counter and the draft written statement appended to these proceedings should be filed in the Court

To the Collr of South Kanara with records as per list at p4 cf and (2) Copy of Madras Govt's opinion at pp 5-6 cf (3) draft counter pp7-9 and (4) draft written statement at pp11-17

Where Please Copy items 2 to 4 and send.

with - South (Kanara) - Mangalore
st Mun/h - Ohno 435/35 -
Jeppinamogar Vge - T.S no
539/1H - Assignment -
Resumption - Reference -
orders

A. 54.35 Hh 1-4 cf

To Rs

Please see the Collrs
letter at Hp 1-4 cf

2/. The facts of the
case are contained in Bp
Unit 1370 dated 3/4/35,
and the Board sanctioned
the resumption of the un-
licensed portions of T.S no
539/1-A in its reference B369-35-1
dated 6-3-35, and peaceful
re-entry of the plot was
effected on 17/4/35 The
Land Revenue Commissioner
inspected the case on 28/9/35
and his remarks are at Hp 8 nf
of (71). In Bp Ors 3856 dated
10/10/35 the Board approved
the Collector's proposal to assign

portion of T.S no 839/1A for the construction of houses by or for Govt peons. The Board also refused to restore the resumed plot of land to the Roman Catholic Church which has now filed the present suit.

The local Gvt Considers that the result of the suit will depend on the question as to whether the Govt had a right to resume the land, and that this question is not free from difficulty. (My original notes of grant is o) The Coll states that he has no hesitation to say that the Govt have the right to resume the land and that this is the fittest case in which they ought assert this right He recommends that the suit may be defended but at the same time he states that the Gvt Madras may be consulted in the matter As the local Gvt also feels doubtful, and considers that the question is not free from difficulty, it seems safer

to consult the Govt Madras and take this advice in the matter

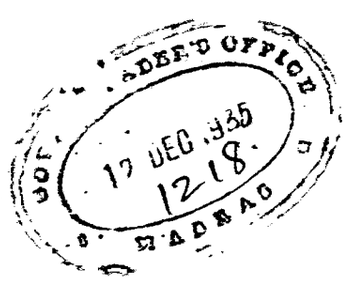
The vakil reports that the suit is posted to 15/2/36 but the petition for temporary injunction is likely to come up soon and requests early orders or orders

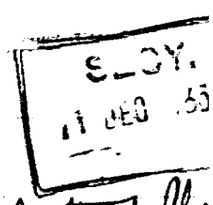
The vakil has since reported that the petition for temporary injunction is posted to 6/1/36

The file may be sent to the Govt Pleader Madras for favour of his opinion whether the suit can be successfully defended and if so, whether the draft written statement and counter are in order.

In the order of 1906 the Board was transferred to Perambore burial ground & assigned to the Union free of assessment The purpose not having been fulfilled i.e. the part of the land was not used as a burial ground presumably it could be resumed & now through

there was no conditions imposed
I think there is the point on which we want
legal opinion G.P. must
consulted





with the following needs

(1) C.T. 26 pages
(2) N.T. 4 pages
(3) Bfmis 1370 d 3/4/35
(4) Bf mis 3856 d 10/10/35
(5) Collis D Rs 1601/35
(6) Collis R Rs 5378/28.
(7) Taluk R Rs 4706 — Rs 16/5/35
(8) Taluk D.R. 234 1345.
(9) Taluk R Rs 705 26/9/1896.
(10) Collis R Rs 1058 — Vac 1895 6/7/1895.
(11) Collis Rs 119 R Vac/1906 —
(12) Collis R Rs 26/3/190 37/39/3
(13) Collis D Rs 18/3/35 6331/33
(14) Collis D Rs 16/6/34 2218/34
(15) Collis R Rs 27/6/36 12909/3
(16) Collis R Rs 4/5/31 4762/35

11/12/35 27/10/35

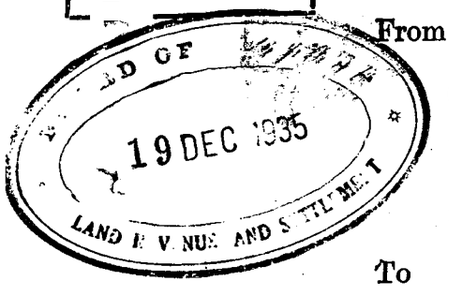
5

C.F. 32.

JUDICIAL DEPARTMENT

In reply, please quote number, date and short title.*

Received..... *Registered* A5652



From (Name) M.R.RY., K.S.Krishnaswami Ayyangar Avl.,

(Designation) Government Pleader,

Post Box....., (Station) Madras.

Telegraphic Address.....

To

The Secretary to the Board of Revenue,
Land Revenue & Settlement.

opinion *No.* 38, *dated* 18th Decr. *19* 35

Sir,

Enclosures.....

.....

.....

Spare Copies 4

Suits - (South Kanara) - Mangalore District Munsiff - O.S.No.435/35 - Jeppinamogar Village T.S.No.839/1A - Assignment - Resumption- Defence - Orders - Draft Written Statement and Counter Affidavit - Revised-

Ref:- U.O. Ref.A.5435/35-1, dated 11-12-1935.

I have redrafted the Written Statement which may be filed in Court simultaneously with the counter affidavit. I agree that the main question in the suit is whether the Government is entitled to resume the land. If the original grant was itself made by an authority not competent to make it the grant is ab initio void and cannot confer any title on the grantee. It would appear from the Resolution of the Government of India (Home Department, dated 28-3-1895) made under the authority of 22 and 23 Victoria, Chapter 41 and 33, and 34 Vict. Chapter 59 that the only authority competent to make the grant was the Secretary to the Government. The Collector's Order of 6--7--1895 is therefore open to the objection that it was incompetent and therefore invalid. Further it would appear from Board's Standing Order 24(10) that a grant of State land for public religious, educational or other purposes should always contain the condition that if the land is not used for the specific purpose for which it

was granted or the conditions on which it was granted ceased to be fulfilled the Government may resume it but this condition is not expressly mentioned in the Collector's Order. As at present advised I am of opinion that a condition of the kind which is generall implied in all inam grants should also be implied in the Collector's Order which expressly mentions the purpose of the order as being the use of the land as a burial ground. This question requires further investigation. As the matter is however urgent, I have drafted the written statement in a comprehensive way and this may be filed into Court. I am clear however that the suit ought to be defended.

I have the honour to be,
Sir,
Your most obedient servant,

H. J. Krishnaswami Iyer

Government Pleader.

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.No. 435 of 1935.
R.I.A.No. 994 of 1935.

Between:

Rosario Cathedral Parish Church. Plaintiff - Petitione

and

The Secretary of State for India. Defendant -Respondent

Counter of the Defendant.

1. That the petition is not maintainable in law and on facts.

2. This defendant denies that the possession of S.No.74/1A other than portion of 74/1A1 for which licence has been issued by the Municipality was in the possession of the plaintiff Church at the time of the filing of the suit.

3. This defendant submits that the Board of Revenue, Madras, as per its resolution B.369/35/1 dated 6-3-1935 has ordered the resumption of the said land ~~the~~ and the Collector has ordered the same to be assigned to the menial servants of the Revenue Department after a member of the Board personally inspected the locality and approved the proposal.

4. That the Revenue Inspector of Mangalore acting under the orders of the Tahsildar, Mangalore took peaceful possession of the said properties on 17-4-1935. The defendant submits that no injunction can therefore be granted.

5. That the Tahsildar of Mangalore has subdivided a portion of the plot into 74/1A2 to 1A 11 and has

assigned it to 10 peons in D.C.No.640 of 1343 on his file and nothing more remains to be done. ~117(51)

6. The Board of Revenue the Collector and the Tahsildar having all acted within their authority, their acts are not liable to be questioned at the instance of the plaintiff in a suit. ~27(71) ~1-2(P) ~7-8(P)

7. That the defendant has resumed the land which was classed as Poramboke land. The plaintiff Church has no immediate use for it; and the land cannot be used as a burial ground as the Municipality has refused to grant permission to use it as a burial ground. ~27(71)

8. This defendant denies that any grant of the land was made for burial purposes or that the classification of the land as poramboke can be construed as a dedication for any such purpose. This defendant also denies that the plaintiff can make use of the land for any purpose other than that for which it was set apart viz., for use as a burial ground. ~25(T)

9. This defendant submits that he has absolute power to retransfer a land from Poramboke to ayan and the act of the authorities of the Revenue Department in having done so cannot be questioned by the plaintiff.

10. This defendant denies that the plaintiff has power to use the unlicensed land for anypurpose other than burying dead bodies and that no permission is needed for the use of the same for erecting buildings or that the unlicensed land can be used for purposes which the plaintiff deems auxillary to a burial ground.

11. This defendant submits that under the circumstances the plaintiff is not entitled either to the declaration or injunction sought for in the plaint.

12. The plaint is further defective under section 42 of the Specific Relief Act.

13. As such this defendant submits that there is no case made out for the issue of a temporary injunction pending the disposal of the suit and prays that the same may be dissolved and this defendant allowed his costs.

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE

O.S.No. 435 of 1935.

The Rosario Cathedral Parish Church, Mangalore. ... Plaintiff.

And

The Secretary of State for India in Council. ... Defendant.

Written Statement of the defendant under Order VIII, Rule 1, C.P.C.

The defendant abovenamed begs to state as follows:--

1. That the address of this defendant is as stated in the plaint.

2. This defendant is not interested in traversing the allegations in plaint paras 3(1) and (2).

3. This defendant while admitting that Rev. Father E.Frachetti, S.J., applied for and obtained from the Collector of South Kanara, S.No.74/1A free of assessment denies that it was applied for or obtained in anticipation of the requirements of the said Parish Church. This defendant submits that under the representation that the then existing burial ground of the said Parish Church was almost full and that there was an urgent need of another burial ground, Rev. Father Frachetti applied to the Collector of South Kanara for the grant, free of assessment, of S.No.74/1A for use as a burial ground and the Collector, believing the said representation to be true, by his Order dated 6-7-1895, as modified by orders dated 30-3-1896 and 26-3-1906, sanctioned the

grant and directed the transfer of the land from Ayan to Poramboke.

4. Ever since the said date the land has remained and conti..... as Poramboke and registered as such in the revenue registers of the Village. The land has therefore, in spite of the proceedings of the Collector referred to in paragraph 3 of the plaint, been treated as the property of the Government all along.

5. The defendant states that there has been no valid grant of the land in favour of the plaintiff as claimed in the plaint. The Collector who is alleged to have made the grant was not competent to make it. The requirements and conditions of the relative statutes and the Standing Orders of the Board of Revenue, for a valid grant of State land have not been co ied with; The plaintiff therefore has not, nor did it ever have any title to the land in suit.

6. In any case the grant was in fact made for a specific purpose viz., for use as a burial ground, and not having been used for that purpose it was liable to be resumed and was accordingly resumed by Government.

7. Neither at the time of the application and the order of the Collector referred to in paragraph 3 of the plaint, nor at any time since was there a need for any additional burial ground for the --

parishioners of the Plaintiff Church. Even in that portion of S.No.74/1A for which a burial license has since been obtained by plaintiff there has been no burial at all before 1928, and not more than one burials since. The Collector's Order, which was passed on a representation of necessity for a burial ground, when no such necessity existed, is also invalid for this additional reason.

8. The Municipality having refused license for user of the suit land for purposes of burial, the grant failed, and the land vested back in the Government and the defendant became entitled to resume it.

9. The defendant admits in general the averments in paragraph 3(9) of the Plaint, but submits that the resumption was in every way valid and regular. After and as a consequence of the resumption, the land was retransferred to Aya...

10. The defendant states that the suit land has always remained waste and unoccupied, and after the resumption aforesaid the Collector took peaceful possession thereof through the Revenue Inspector on or about the 17th April 1935. Portions of the land have also been assigned on Dharkast as house-sites to peons serving in the Revenue Department The Dharkast proceedings which were in charge of the Tahsildar were completed by him on or about the 9th November 1935 without knowledge and before communication of the Interim Injunction granted

by the Court. In the circumstances aforesaid the defendant submits that the plaintiff is not entitled to the injunction sought for by him, and the interim order aforesaid should be vacated.

11. This defendant denies that the plaintiff put up a boundary wall acting on the orders of the Collector or that it was required to do so by any Order from the Collector as wrongly stated in para 3(4) of the plaint. This defendant does not admit that the plaintiff spent Rs.383-13-0 till 1930 on improvements or that such improvements were necessary for the land. This defendant denies that ever since 1896 the plaintiff has been maintaining the road in the plaint plots as required. This defendant understands that the road is being maintained by the Municipality.

12. This defendant admits that after permission was given to the plaintiff to use a portion of 74/1A1 as a burial ground by the Municipality, it has enclosed it by a wall, but this defendant is not in a position to say whether it was at a cost of Rs.1047-1-3 or that it was done for preventing the place from desecration.

13. The averments in paragraph 3(7) consist of matters of evidence or argument. The defendant does not admit the correctness of either.

14. The defendant does not admit the correctness of the averments in para 3(8) of the plaint. Both the application of the late Rev. Fr. E. Fracnetti S.J. and the order of the Collector were for the use of the land only as a burial ground and not for burial purposes. The order of the Collector limiting the user of the land as a burial ground cannot be extended so as to authorise the application of the land for "burial purposes". Nor can "burial purposes" include the construction of a mortuary chappel and quarters for the watcher or grave digger. The defendant does not admit that these are auxiliary for a Roman Catholic burial ground and submits whether auxiliary or not they cannot be justified as being within the scope of the Collector's order aforesaid. The extended meaning now sought to be attributed to the Collector's Order is against the terms of the original Application of Rev. Fr. Frachetti S.J., himself.

15. The averments in para 3(10) and (11) of the plaint are incorrect and consist mainly of argumentative matter. In so far as they referred to matters of fact the defendant puts

the plaintiff to proof thereof. In so far they refer to matters of law and argument the defendant submits that they are incorrect.

16. The defendant puts the plaintiff to the proof of the allegation in para 3(11) of the plaint that the plaintiff is or has been in possession of suit land since 1896. The defendant further puts the plaintiff to proof of the allegation that it has spent a considerable or any sum of money over the suit land. The defendant denies the assertion that the defendant is not entitled to resume the suit land or assign it on Dharkast or that he is estopped either by the terms of the Collector's order or the defendant's subsequent conduct for resuming the suit land. The defendant also denies that the order of the Collector in 1895 even if valid amounted to a dedication for a public purpose or that by such dedication the plaintiff acquired or had an interest in the land which could not be put an end to by the defendant.

17. The defendant admits that the Collector did direct possession of the suit lands being resumed and as already mentioned possession has been

18. The defendant denies that the plaintiff is entitled to all or any of the reliefs claimed in para 3(11) and 3(15) of the plaint. In any event the defendant submits that the Collector's order even if valid purported to give the suit land for the benefit of the parishioners and the suit brought by the plaintiff which has no title is unsustainable as the grievance if any was the grievance of the parishioners and not of the plaintiff.

19. The suit as brought praying for a declaratic and injunction without asking for possession of suit land is unsustainable.

20. In any event the suit has not been properly valued and the proper court fee under Sec.7(4)C of the Court Fees Act as amended by Madras Act V of 1922 has not been paid.

21. The defendant therefore prays that the suit may be dismissed with costs.

Case see the Board

h. o. reference to the GR Madras at pr 4 nf and the GR's opinion at pp 5-6 nf. The GR has also sent a revised counter and a revised written statement.

2/ In his letter at pp 5-6 nf the GR Madras has raised ~~a~~ the point ~~wrongly~~ that the Coll'r was not competent to make the grant and it was therefore incompetent and invalid. He refers to BSO 24-(10) which relates to alienation of land and he seems to think that the present case is governed by this BSO. On the other hand the original order dated 6/7/95 made by the Coll'r seems to show that it is a case of ordinary assignment. The grant was however made free of assessment and for a specific purpose namely burial ground, according to the assignment rules then in force. According to Mackenzie's edition of BSO 1882 - BSO 36 (2)

stated that Govt sanction must be obtained when assessed Jan waste or otherwise is assigned for any purpose other than occupation on payment of as The corresponding standing orde in Chenchal Rao's edition of 1890 is 34 (2) which lays down that Govt sanction must ordinarily be ~~obtained~~ when ~~waste~~ assessed land waste or otherwise is assigned fo any purpose, other than occupati on payment of assessment. Bu where assessed land is required for villagesites or other Communal pur Collr may transfer such land to the head of unassessed and may then allot it as authorised by para 1 S.O. 32. This paragraph as amended by Correction slip dat 6/1/1892 states that Govt ~~must~~ sanction must lee obtained when unassessed land is assigned fo any purpose other than occupation on payment of assessment, except in the case of assignments for villagesites or other Communal purposes which may be sanctioned by Collr It appears

that the use of the land as burial ground was apparently created as a communal purpose and the Crown granted the land to the church free of assessment. This also seems to explain the transfer of the land to Pembroke in the order of 1906.

The history of the present standing order 24 is dealt with below: There was no standing order corresponding to the present S.O. 24 in Dr Maclean's Edition. It was first introduced as Standing order No 12-(A) in 1892. Para 3 of this Standing order laid down that Colls may grant unoccupied lands free of assessment or ~~ex~~ unoccupied lands from assessment when required for roads, by transferring them to ~~Pembroke~~ In other cases application ~~has~~ to be made to the Board of Revenue. This Standing Order seems to relate either to lands occupied by municipal and Local Boards and does not seem to apply in the present case. If this view is accepted it does not

seems doubtful whether
~~appear that~~ it can be successfully
contended that the grant made by the Colr
in 1895, was incompetent and invalid ... If so, para 5 of the Pltf's written statement will have to be omitted — p 17(y), p 12 nf

As the Plf is clear that the suit ought to be defended, the defence may be sanctioned and the written statement and the Counter furnished by the Plf may be filed in Court, subject to such modifications as may be ordered by the Board — p 6 nf, H 7-17 nf

For orders

12/35

Para 5 of the written statement as drafted by the Pltf Pleader may be omitted as Collectors were Competent in 1895 to ~~set apart~~ allot "assessed" and "unassessed" lands for Communal purposes. The Collector's order of 1906 says that "the plots should be "transferred to Porambokke and "assigned to the Vicar". In para 3(3) of the plaint, the plaintiff seems to raise the plea that this order — p 12 nf above. p 25 of T, H 5-6 Cf

was in the nature of an outright assignment in favour of the Parish Church. This plea is untenable & has to be met by the Court. The portion marked A on p 14 Cf of the Local Court Pleader's written statement may be substituted for para 5 proposed to be deleted from the Madras P.P's written statement.

The draft written statement as modified above and the Counter prepared by the P.P Madras may be approved and the Defence sanctioned

Our defence really

(1) It was not assigned

(2) If it was assigned the Collr was competent to assign hence G.Os draft at A on p 14 Cf may be substituted for para 5 of Madras G.Os. draft

Toxicologie (Cas)

3/1/36